PRELIMINARY DRAFT FACT SHEET

National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Eastern Washington

Note: This preliminary draft Fact Sheet is NOT complete. It is focused on providing context and clarification for particular selected sections/requirements in the preliminary draft Permit. The final Fact Sheet will include legal and technical justifications for the Permit requirements, as well as additional context and clarification.

PUBLIC COMMENT PERIOD

This Fact Sheet accompanies the Preliminary Draft of the Phase II Stormwater Permit for Eastern Washington. Ecology is soliciting public comment on the Preliminary Draft Permit and this Fact Sheet until the close of business on Friday October 14, 2005. Comments should be sent to Karen Dinicola by email to kdin461@ecy.wa.gov or hard copy to Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia WA 98504.

Ecology will host two public workshops on the Preliminary Draft Permit: Monday, September 26th at the Spokane Regional Health District Auditorium, 1101 West College Avenue; and Thursday, September 29th at the Hal Holmes Community Center, 201 North Ruby Street in Ellensburg. Both workshops will be held from 10:00 a.m. to 3:30 p.m.

INTRODUCTION

Stormwater is the leading contributor to water quality pollution in our urban waterways. As urban areas grow, stormwater is also Washington's fastest growing water quality problem. More than 100 jurisdictions statewide and at least 23 Cities and Counties in eastern Washington are required under federal regulations to get NPDES permit coverage for their stormwater discharges. Ecology is developing separate NPDES Municipal Stormwater Permits for eastern and western Washington. Development and implementation of these stormwater permits is challenging because the regulated municipalities vary in size, hydrologic setting, existing stormwater management programs, and funding abilities.

This Permit is intended to implement the federal "six plus two" minimum requirements that call for municipalities to have the following stormwater management elements in place:

- Public education and outreach
- Public involvement and participation
- Illicit discharge detection and elimination
- Construction site stormwater runoff control
- Post-construction stormwater management
- Pollution prevention and good housekeeping for municipal operations
- Requirements based on approved Total Maximum Daily Loads (TMDLs)
- Evaluations of program compliance

In addition, based on state law and for more efficient implementation, this Permit includes protection of groundwater where not covered by existing programs and areas of Cities and Counties that are slated for future growth.

To implement the regulations, Ecology: uses a narrative Best Management Practice (BMP) approach to stormwater control rather than numeric effluent limitations; defines the level of effort required for each of the "six plus two" requirements as part of the permit development and issuance process; bases requirements on recognized practices from existing programs; uses compliance schedules where appropriate; focuses efforts on development of local programs that protect existing water quality rather than restoring degraded areas, except where mandated by TMDLs; and requires each Permittee to evaluate of the effectiveness of the entity's Stormwater Management Program (SWMP).

Ecology's decisions to extend the certain permit requirements beyond what is required by the federal rules are detailed in the *Municipal Stormwater NPDES Program Report to the Legislature January 2004* (Ecology Publication Number 04-10-010). This publication is available at www.ecy.wa.gov/biblio/0410010.html. Two stakeholder advisory committees, one for eastern Washington and another for western Washington, were convened to address a range of stormwater permitting issues identified by the legislature. Included in the report are the recommendations of both advisory committees and Ecology's proposed approach to resolve each of the issues.

In developing this Permit, Ecology recognizes that permits alone cannot prevent all stormwater impacts and preserve natural resources and their associated beneficial uses. For multiple reasons, the cumulative impact of unregulated stormwater will continue to contribute to water quality degradation. First, the Permit applies only to discharges owned or operated by public entities and does not regulate privately-owned direct discharges. Second, the Permit only requires new development and redevelopment controls on sites that disturb more than one acre of land. Third, land development as currently practiced results in significant changes to the natural hydrology of watersheds; these changes impact aquatic resources.

As a result of the limited scope of the Permit, the requirements should have the effect of slowing degradation but cannot successfully prevent further harm to water bodies that receive urban stormwater discharges. Ecology has developed recommendations for further action by state and local governments; the actions fall into four categories: (1) preventing impacts from new stormwater discharges; (2) reducing impacts from existing discharges; (3) making changes to the relationship between built and natural environments; and (4) adaptive management. The recommendations outlined below go beyond the scope of requirements of this Permit.

Preventing impacts from new stormwater discharges: Because of the irreversible nature of stormwater impacts on urban streams, one of the greatest needs is an effective strategy to prevent impacts from new development. The local and national information we have so far show that, if we want to prevent impacts to water bodies in areas where significant human populations reside, we must reduce impervious surfaces (e.g. surfaces that do not allow rain to soak into the ground), retain high percentages of native vegetation (particularly in established forests), and minimize road densities and roads crossing streams. In other words, we must change land development practices. To address the shortcomings of this Permit and to effectively prevent continued

degradation of waters of the state, Ecology recommends that the following actions be considered outside of this Permit:

- Control stormwater discharges from all new development: The most cost effective way to control stormwater is to design and build controls at the time of development. Retrofitting stormwater treatment and flow control BMPs into an already developed area is more expensive and less effective. Local governments should establish consistent requirements for stormwater controls at all new development sites, regardless of the one-acre threshold and whether the discharge is to the MS4 or directly to a water of the state. This will result in predictability and a level playing field for developers.

- Stormwater basin planning: In areas where new development is occurring in a relatively undeveloped basin, site-specific controls alone cannot prevent impacts and preserve aquatic resources. Recent research should be applied to identify development strategies that may protect the resources. Scientific modeling of the basin can help predict the extent of potential impacts and the effectiveness of alternative land development options to help avoid those impacts.

- Land use planning: The findings of basin planning and scientific modeling should be incorporated into land use planning conducted under the Growth Management Act and into local programs to protect critical areas. Changes in land development practices, or restrictions on the extent and location of development, or both, may be required to protect critical areas.

Reducing impacts from existing stormwater discharges: This Permit alone does not address most existing stormwater discharges; it applies only to discharges owned or operated by the Permittees. There are additional stormwater discharges into waters of the state from privately owned systems, most often from properties directly adjacent to water bodies. Neither does this Permit require active identification and control of sources of pollutants or flow-related impacts to urban streams. To address the shortcomings of this Permit and to effectively prevent continued degradation of waters of the state, Ecology recommends that the following actions be considered outside of this Permit:

- Setting goals for urban water bodies: Local governments should establish resource goals for urban watersheds to assess the need for appropriate stormwater pollution and flow controls to protect those watersheds. Water bodies in areas dominated by urban development cannot be restored to a condition equivalent to a pristine stream or lake, but we must acknowledge the value of urban water bodies and the need to make them safe for human contact, and provide habitat in these waters for aquatic life.

- Stormwater basin planning: Stormwater basin planning means quantifying flow-related impacts and sources of pollution to urban water bodies. This information is needed to target resources on structural and non-structural controls (such as maintenance and public education) so that goals for urban water bodies can be met. In many basins, this planning can be combined with the new development planning described earlier.

Making changes to the relationship between built and natural environments: Stormwater impacts are just one of the areas where meeting goals of environmental protection also helps to meet goals of livability. Many communities are also concerned about loss of open space, traffic congestion, and air quality. To address the shortcomings of this Permit and to effectively prevent continued degradation of waters of the state and help meet these other livability goals, Ecology recommends that the following actions be considered outside of this Permit:

- Protect and restore stream buffers: Streamside buffers serve many useful functions in promoting healthy aquatic natural resources. Broad buffers, relatively unbroken by road crossings, with mature native shrubs should be protected and restored in developed and developing areas. Healthy buffers can reduce the need for structural stormwater controls.

- Reduce use of chemicals: Pesticides have been detected in rivers and streams throughout eastern Washington. Throughout the U.S., pesticides have been detected in virtually all urban runoff. Since it is difficult to remove these chemicals from water, their use should be reduced.

- Reduce dependence on automobile and road density: About 65% of the impervious surface in urban areas is used for roads and parking areas for automobiles. Because these transportation-related surfaces have more pollution-generating activities and are densely networked and often directly connected to streams, roads and parking areas can cause greater impacts to streams, both in runoff quantity and quality, than similar areas if rooftop or other impervious surfaces. Reducing dependence on the automobile and the areas occupied by roads and parking areas will reduce stormwater impacts.

- Implement low-impact development and preserve more undisturbed areas: Washington's population is projected to increase by 22 percent from 2000 to 2010, with much of that growth slated for Cities and Counties in eastern Washington that are subject to regulation by this Permit. Urban land area in the U.S. has quadrupled since 1954 and, in most metropolitan areas, urban land area increased more than twice as fast as the population did between 1950 and 1990. Passage of the Growth Management Act was spurred, in part, by this disparity between urban land area and population growth rates. Compact-style development, with a smaller footprint, reduces impervious surfaces; preserved natural areas within the urban core; and improved water detention can help accommodate growth while protecting the environment.

Adaptive management: Adaptive management means constantly evaluating what we are doing, finding what works and what does not work, and changing what we are doing based on what we learn. Stormwater management programs require a substantial expenditure of funds at both the local and state levels, and by private development. The public deserves to know whether these funds are being spent effectively. It is also important that we know whether our stormwater programs are adequate to protect our aquatic resources, and whether we are making progress toward reducing existing stormwater impacts. Ecology recommends that environmental monitoring be conducted not to determine permit compliance, but in order to revise the Permit and SWMP as more is learned about the best way to manage stormwater. To address the shortcomings of this Permit and to form the basis of an adaptive management program, Ecology recommends that the following types of monitoring be considered outside of this Permit:

- Biological monitoring of receiving waters: in areas with substantial new development, to measure any loss of beneficial uses or degradation of biological diversity; in areas with substantial development and degraded resources to establish current conditions, help set priorities, determine watershed goals, and measure progress in restoring beneficial uses.

- Chemical sampling and physical measurements in receiving waters: to assess the health of receiving waters and assess whether they are: achieving water quality standards; and providing habitat for biological resources.

- Chemical sampling and/or toxicity testing of stormwater discharges: to identify causes of any impacts such as fish mortality.

- Monitoring to protect public health: to determine whether the fish are safe to eat; or whether the water is safe for swimming and other contact recreation.

- Tracking land cover changes: to use the physical status of a watershed as an environmental indicator, specifically by identifying associations of land cover changes with aquatic resource impacts.

Ecology is required to implement the federal Clean Water Act and state Water Pollution Control Act. Ecology has developed this preliminary draft Permit within the framework created by these statutes and has described a Stormwater Management Program that should be workable for the Permittees. In this Fact Sheet, Ecology has documented the rationale for many of the proposed permit requirements. The Permit does not address all urban stormwater management needs and will not prevent all stormwater impacts. Citizens and state and local governments will need to work together to implement other actions to protect our water bodies.

SPECIAL CONDITIONS

S1. A Geographic Area of Permit Coverage

Ecology's decision to extend the boundaries of the geographic area of permit coverage beyond what is required by the federal rules is detailed in the *Municipal Stormwater NPDES Program Report to the Legislature January 2004* (see the Introduction to this Fact Sheet) on pp. 10-13. The boundaries of the Urbanized Areas created by strict application of the federal rules do not follow either jurisdictional or GMA planning boundaries. Ecology believes that it makes programmatic and environmental sense to apply the requirements of this Permit to the areas targeted for growth by these entities. This means that for Cities, the permit requirements extend to the entire jurisdiction, and for Counties, the permit requirements extend to the Urban Growth Areas associated with the Cities in each Urbanized Area.

S1.B Permittees

Urban Area maps are available for downloading from Ecology's website at www.ecy.wa.gov/biblio/0410010.html. These maps show the regulated small MS4s located within the five Urbanized Areas in eastern Washington: Clarkston, Spokane, Tri-Cities, Wenatchee, and Yakima. (Clarkston is considered an Urbanized Area because, due to its proximity to Lewiston, Idaho, it is part of an urban center with a population greater than 50,000.)

The jurisdictions shown within the boundaries of the Urbanized Areas on these maps were automatically designated as "regulated small MS4s" for inclusion in the NPDES Phase II stormwater permitting program.

Federal regulations require that Ecology develop criteria to determine whether stormwater discharges from other MS4s are causing or contributing to, or have the potential to cause or contribute to, violations of water quality standards, including impairment of designated uses and/or adverse habitat or biological impacts. In particular, Ecology is required to evaluate small MS4s that are located outside of Urbanized Areas and have a population of 10,000 or more.

The purpose of the evaluation is to determine whether these areas, which were not automatically designated, should be designated as "regulated small MS4s" for inclusion in the NPDES Phase II stormwater permitting program. In eastern Washington, Ecology must evaluate the "Bubble Cities" of Ellensburg, Moses Lake, Pullman, Sunnyside, and Walla Walla. Based on recommendations made by EPA in the Phase II rule proposal, Ecology must consider: discharge to sensitive waters; high population density; high growth or growth potential; contiguity to an urbanized area; significant contribution of pollutants to waters of the U.S.; or ineffective protection of water quality by other programs.

Ecology involved the bubble cities in developing designation criteria and tentatively determined that all of the cities should be designated as regulated small MS4s (see Appendix 1 of the Preliminary Draft Permit). Ecology will consider all information provided by a bubble city prior to making a final designation decision when the final Permit is issued. In particular, each jurisdiction may choose to provide information about: actual discharge points of the MS4, estimated populations served by the MS4 versus UIC facilities or other stormwater disposal methods not discharging to surface waters, and/or a description of the jurisdiction's current stormwater management program.

S1.C Waivers

Ecology granted the Cities of Moxee (Yakima Urbanized Area) and Rock Island (Wenatchee Urbanized Area) tentative waivers from inclusion in this Permit based on a preliminary determination that the portions of their MS4s located within the Urbanized Areas each serve a population of less than 1,000.

S1.D Secondary Permittees

There are dozens of types of special purpose districts in Washington State. Ecology has not yet determined which types of special purpose districts would be required to obtain coverage under this Permit and which ones could be waived from permit requirements, but some of the special purpose districts likely regulated by this Permit are: ports, diking and drainage districts, flood control districts, universities, school districts, and prisons. To be required to have permit coverage the entity must be publicly owned or operated.

Ecology encourages each special purpose district to consider applying for this Permit as a Co-Permittee with the jurisdiction(s) in which the district is located. The district can then rely on the jurisdiction to meet most of the permit requirements and implement only the permit requirements that make the most sense for the district.

S2. Authorized Discharges

Ecology's decision to extend the coverage of this Preliminary Draft Permit beyond what is required by the federal rules is detailed in the *Municipal Stormwater NPDES Program Report to the Legislature January 2004* (see the Introduction to this Fact Sheet) on pp. 14-15. Under federal rules, only discharges to surface water are regulated. Consistent with state law, this Preliminary Draft Permit also covers discharges to ground that are not regulated by another program, *e.g.* the Underground Injection Control (UIC) program.

Consistent with the federal rules, direct private discharges to surface water are not regulated by this Preliminary Draft Permit.

S4. Compliance with Standards

Ecology's priority for municipal stormwater permitting is preventing future impacts to water quality. Therefore, new stormwater discharges are held to a higher standard than existing stormwater discharges: new stormwater discharges must not cause or contribute to a violation of water quality standards; existing stormwater discharges must meet MEP, which means the Stormwater Management Program (SWMP) described in this Preliminary Draft Permit must be implemented, plus any additional requirements of a TMDL or other water cleanup plan that go beyond the SWMP described in S5/S6 of this Preliminary Draft Permit.

S5. Stormwater Management Program (SWMP) for Primary Permittees and Co-Permittees

The SWMP described in this Permit implements the first six of the federal "six plus two" minimum requirements (see the Introduction to this Fact Sheet). Additional SWMP elements such as basin planning and retrofit are not required in the SWMP for this first permit term. While Ecology strongly encourages local governments to conduct basin planning to most effectively manage their stormwater, the priority for this permit is to bring all Phase II communities in eastern Washington to at least a minimum standard of developing and implementing a SWMP.

The federal rules do not describe the minimum level of effort required for each of the minimum requirements. That is left to the permitting authority: in this case, Ecology. The federal rules also intended to allow each Permittee to design their own SWMP to fit the unique circumstances of their community. Ecology recognizes that such individual programs could provide significant benefits, but Ecology does not have sufficient resources to review and approve SWMPs for all Permittees. In lieu of allowing individual programs, this Preliminary Draft Permit specifies minimum performance measures for each component of the SWMP. The minimum performance measures in this Preliminary Draft Permit describe the minimum level of effort that will be required for each SWMP component.

The requirements are based on recognized practices from existing programs and are expected to result in environmental benefits. Most of the minimum performance measures, including the compliance schedules, described in the SWMP in this Permit are based on the *Model Municipal Stormwater Program for Eastern Washington* (Ecology Publication Number 03-10-076). This

"Model Program" was developed by a stakeholder group that included representatives of Phase II jurisdictions and other interested parties in eastern Washington.

Permittees wishing to implement programs different from the SWMP in this Permit may apply for an individual permit or submit modifications to Ecology for inclusion in this Permit. There may be a significant waiting period to get an individual permit, and Permittees may be covered under this Permit while they are awaiting coverage under individual permit. Ecology requests that any proposals for individual SWMPs be included with comments on this Preliminary Draft Permit.

Ecology also recognizes that some communities in eastern Washington have already begun to implement stormwater management programs. This Permit does not encourage those who have existing stormwater management programs to reduce their programs; rather, Permittees are expected to continue implementation of existing SWMP components that go beyond what is required in this Permit where they are necessary to protect water quality and reduce the discharge of pollutants from regulated small MS4s to the maximum extent practicable.

With regard to the compliance schedules, Ecology recognizes that some of these interim deadlines may be necessary for jurisdictions to reach the expected level of effort before the end of the five-year permit term. Jurisdictions may propose different compliance schedules to allow time to ramp up so they can eventually meet the permit requirements; Ecology requests that any such proposals be included as comments on this Preliminary Draft Permit.

Below are some specific comparisons between the Model Program and the SWMP in the Preliminary Draft Permit, and a few additional clarifications of specific requirements under some components of the SWMP:

S5.B.1 Public Education and Outreach

- The Model Program requires jurisdictions to develop a stormwater outreach strategy that identifies and characterizes target audiences and includes information on illicit discharges and improper waste disposal. The Preliminary Draft Permit is more specific in requiring: that a minimum set of specific audiences/classes of audiences be reached, that the outreach include specific information on non-stormwater discharges that are not allowed in the MS4, and that a multi-media approach be used.

S5.B.2 Public Involvement and Participation

- The Model Program requires jurisdictions to hold at least two meetings and publish two notices during the first year to solicit review of the SWMP. The Preliminary Draft Permit does not require a certain number of meetings or notices but instead requires: adoption of a policy or directive to create opportunities for public involvement in developing the SWMP; development and implementation of a process for soliciting comments on the SWMP; and posting the current SWMP on the jurisdiction's website.

S5.B.3 Illicit Discharge Detection and Elimination

- The requirements of the Model Program and this component of the SWMP in the Preliminary Draft Permit are generally the same, including: create a map of the MS4; prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges to the MS4; conduct field assessments and dry-season inspections; develop a spill response plan and procedures to characterize, trace, and remove illicit connections and discharges, and enforcement plan; and train staff.

- Federal regulations define an illicit discharge as "any discharge to an MS4 that is not composed entirely of stormwater runoff" with some exceptions. These discharges are illicit because MS4s are not designed to accept, process, or discharge such wastes. Illicit discharges enter the MS4 through either: deliberate or mistaken, direct or indirect, illicit connections or illegal dumping.

- The federal rules require permittees to have a program to prevent all types of illicit discharges to the MS4. The only non-stormwater discharges allowed in the MS4 are from fire fighting activities not related to training, and discharges authorized by another NPDES permit. However, the rules include the following list of non-stormwater discharges or flows "that shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States": water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. These discharges are not allowed in the MS4, but they are a lower priority for elimination and enforcement activities than illicit connections and illegal dumping. In the Preliminary Draft Permit, these discharges must be prohibited through ordinance or other regulatory mechanism, but enforcement procedures do not need to include sanctions; public education is required for some categories; and otherwise, the SWMP does not need to address these discharges unless they are specifically identified as contributors to a water quality problem.

- In the Preliminary Draft Permit, Ecology has added some caveats to these descriptions, including: no exclusion for charity car washes; for street wash water at active construction sites, street sweeping must be performed prior to washing the street; all necessary permits or authorizations must be received prior to diverting stream flows into a MS4; swimming pool discharges and planned discharges from water lines and potable water sources must be dechlorinated, pH adjusted if necessary, reoxygenated, and controlled to prevent resuspension of sediments; swimming pool cleaning wastewater and filter backwash cannot be discharged to the MS4; and hyper-chlorinated water cannot be discharged, even after de-chlorination.

- Public education and outreach activities are required in the Preliminary Draft Permit to reduce the following types of non-stormwater discharges: individual residential car washing, street wash water, and lawn watering and landscape irrigation. Some existing

water conservation programs may fulfill this requirement, which overlaps with the requirements of S5.B.1 Public Education and Outreach.

S5.B.4 Construction Site Stormwater Runoff Control

- The requirements of the Model Program and this component of the SWMP in the Preliminary Draft Permit are generally the same, including: adoption of an ordinance or other regulatory mechanism to require stormwater runoff controls at construction sites (using the BMPs from the *Stormwater Management Manual for Eastern Washington*, or an equivalent document); review of site plans; site inspections; a phone number to get information from the public; and training.

- Federal regulations require Permittees to develop, implement, and enforce a program to reduce pollutants in stormwater runoff from construction activities. This requirement is limited to projects which disturb one acre or more. Permittees are not required to regulate projects of less than one acre unless the smaller project is part of a common plan of development or sale that is greater than one acre.

- Ecology intends to make the requirements for developers the same under both this Permit and under the *Construction Stormwater General Permit* (see the section on Appendix 2 in this Fact Sheet).

- Ecology intends to define the process for jurisdictions to become recognized as having Qualified Local Programs (QLPs) in the *Construction Stormwater General Permit*. If a local government has a QLP, then the developer of a site in that jurisdiction will only need a single permit, from the QLP; otherwise, the developer must be permitted by both Ecology and the local government. pursuant to SWMP S5.B.4.a.ii

S5.B.5 Post-Construction Stormwater Management for New Development and Redevelopment

- The requirements of the Model Program and this component of the SWMP in the Preliminary Draft Permit are generally the same, including: adoption of an ordinance or other regulatory mechanism to require post-construction stormwater runoff controls at new development and redevelopment sites (using the BMPs from the *Stormwater Management Manual for Eastern Washington*, or an equivalent document); plan review; site inspections; and training.

- Federal regulations require Permittees to develop, implement, and enforce a program to reduce pollutants in stormwater runoff from new development and redevelopment projects. This requirement is limited to projects which disturb one acre or more. Permittees are not required to regulate projects of less than one acre unless the smaller project is part of a common plan of development or sale that is greater than one acre.

- The threshold requirements in the *Stormwater Management Manual for Eastern Washington* for applying the BMPs are different from the federal requirements. Based on input from local stormwater managers and technical experts, the manual sets threshold requirements at various levels for various areas and activities, but always much lower

than one acre. For this Permit, Ecology has applied only the federal one-acre threshold, not the lower, technically-based thresholds contained in the manual. Ecology encourages Permittees to apply the technically-based thresholds in the manual to all development projects in their jurisdiction, regardless of the land area disturbed by the project.

S5.B.6 Pollution Prevention and Good Housekeeping for Municipal Operations

- The requirements of the Model Program and this component of the SWMP in the Preliminary Draft Permit are generally the same, including: development and implementation of an O&M plan, including; staff training; coverage of applicable projects and facilities under the Construction and Industrial General Stormwater Permits; development of Stormwater Pollution Prevention Plans for appropriate sites; keeping records of inspection and maintenance. The Preliminary Draft Permit does not include the Model Program requirement to inspect and clean catch basins annually, and adds a requirement to spot check stormwater treatment and flow control facilities after major storm events (>10 year recurrence interval rainfall).

S6. Stormwater Management Program (SWMP) for Secondary Permittees

With this special condition of the Preliminary Draft Permit, Ecology is attempting to describe a SWMP that makes sense for the wide range of Secondary Permittees that are subject to coverage under this Permit. These Permittees generally do not have the same legal authority as Cities and Counties, and the populations served by the special purpose districts generally coincide with the populations of the permitted Cities and Counties. Ecology believes the SWMP for Secondary Permittees should focus on:

- The non-enforcement aspects of illicit detection and elimination (and rely on the jurisdiction for the enforcement aspects),
- Construction and post-construction stormwater management on the Secondary Permittee's projects, and
- Pollution prevention and good housekeeping for the municipal operations of the Secondary Permittee.

S7. Compliance with Total Maximum Daily Load (TMDL) Allocations

The TMDL, or water cleanup plan, process is established by section 303(d) of the Clean Water Act. Federal law requires states to identify sources of pollution in waters that fail to meet state water quality standards and to develop TMDLs to address those pollutants. TMDLs establish limits on pollutants that can be discharged to the water body in order to allow state standards to be met. After a TMDL is approved by the U.S. Environmental Protection Agency (EPA), the limits on pollution set in the TMDL must be included in NPDES permits that are issued to cover discharges into that water body. The federal regulations require that, if a TMDL is in place, the permit holder must comply with any more stringent effluent limitations in the Permit, including modifications or additions to the federal "six plus two" requirements.

The following is a list of TMDLs that were reviewed for this Permit; it includes approved TMDLs as well as TMDLs that could potentially be approved by EPA prior to the effective date of this Permit.

TMDL(s) reviewed for water body	**Parameter(s)**	**Phase II jurisdiction(s)**	**Stormwater Management Requirements**	**Date(s) approved**
Giffin Lake	Phosphorus	Yakima County	Possibly	*Targeted for 2007*
Granger Drain	Bacteria	Yakima County	None	2003
Lake Chelan	DDT, PCB	Chelan County, WSDOT	Expected	2006
Liberty Lake	Nitrogen, phosphorus	Spokane County, Liberty Lake	None	1993
Little Klickitat River	Temperature	WSDOT	None	2003
Little Spokane River	pH, dissolved oxygen, temperature, fecal coliform bacteria	Spokane County, WSDOT	Probably not	*Targeted for 2006*
Lower Yakima River	Suspended sediment, turbidity, and DDT	Yakima County	None	1997
Moses Lake	Phosphorus	Moses Lake, WSDOT	Possibly	*No target date set*
Naches River	Temperature	Yakima County, WSDOT	Expected	*Targeted for 2006*
Okanogan River	DDT, PCBs	WSDOT	Yes	2005
Selah Ditch	Ammonia, chlorine, fecal coliform bacteria, dissolved oxygen, biochemical oxygen demand, temperature	Selah, Yakima County	Expected	*Targeted for 2006*
Similkameen River	Arsenic	WSDOT	None	*Targeted for 2006*
South Fork Palouse River	Ammonia; pH, fecal coliform bacteria, dissolved oxygen, & temperature	Pullman, WSDOT	None for ammonia (1994); expected for other parameters	1994; & *targeted for 2006-2007*
Teanaway River	Temperature	WSDOT	None	2004
Upper Yakima River	Suspended sediment & organochlorine pesticides; temperature	Ellensburg, WSDOT	None for sed. & pesticides (2004); expected for temp.	2004; & *targeted for 2006*
Wenatchee River	pH, dissolved oxygen, temperature, DDT, fecal coliform bacteria	Wenatchee, Chelan County, WSDOT	Expected	*Targeted for 2006*
Wilson Creek	Fecal coliform bacteria	Ellensburg, WSDOT	Expected	*Targeted for 2005*
Yakima Area Creeks (Wide Hollow Creek, Moxee Drain, & Cowiche Creek)	Fecal coliform bacteria	Yakima, Yakima County, Union Gap, Moxee, WSDOT	Expected	*Targeted for 2006*
Yellowhawk, Garrison, and Mill Creeks (Walla Walla)	Chlorinated pesticides & PCBs; pH, dissolved oxygen, fecal coliform bacteria, & temperature	Walla Walla, WSDOT	Expected	*Targeted for 2006 & 2006-2007*

S8.A Monitoring

Federal rules require Permittees to have a monitoring program to detect illicit discharges; and to evaluate: program compliance, appropriateness of BMPs, and progress toward achieving measurable goals. The rules intend this monitoring to influence changes in SWMPs to better protect water quality. The types of monitoring needed may be broken down into two major categories: compliance monitoring and environmental effectiveness monitoring. Compliance monitoring, including documentation of achieving measurable goals and qualitative assessment of the effectiveness of BMPs, is required as part of this Preliminary Draft Permit.

Ecology will determine, through information gathering and in the process of developing the next permit, what environmental effectiveness monitoring (if any) will be required in the next five-year permit cycle. The intent of such monitoring is to answer whether the SWMP is adequate to protect water quality, and it may be considered another form of compliance monitoring. Ecology believes that some environmental effectiveness feedback information is critical to successful long-term implementation of the SWMP components of this Permit. This Permit's fourth year requirement for Permittees to identify priority areas for future evaluation will provide Ecology with some of the information that will be used in making that determination. Ecology will also solicit ideas about the extent to which the permit is the vehicle to collect this information; what are the most efficient methods by which this monitoring can be accomplished; and what entities are most appropriate to conduct the monitoring.

GENERAL CONDITIONS

G14 General Permit Modification

After the final Permit is issued it may be modified at the request of a Permittee or other entity. Ecology may issue an administrative order if it is deemed urgent to implement the requirements of a newly approved TMDL before it is time to reissue this Permit. Ecology also may initiate a permit modification if new information becomes available during the permit term that should be considered prior to renewal of the Permit, such as a substantive change to the Minimum Technical Requirements in Appendix 2. Permittees will have an opportunity to appeal any administrative order or permit modification.

The process for a permit modification at the request of a Permittee is described below:

1. This Permit may be modified according to the following modification review and approval process:
    a. In accordance with WAC 173.226, a Permittee may request to modify the provisions of this Permit. The Department will determine whether the requested modification constitutes a minor modification of the permit. Requests for modifications which meet the criteria for a minor modification under 40 CFR 122.63 will be processed as a minor permit modification. All requests which do not meet the criteria for a minor permit modification will be processed as a formal permit modification.
    b. For minor permit modifications, the Department will review the request for completeness and will either: approve, approve with changes, or deny the request

for a permit modification. The Department will notify the Permittees of its determination within 90 days of receipt of a complete permit modification request.

c. For permit modifications other than minor permit modifications, the Department will review the request for completeness and will either: tentatively approve, tentatively approve with changes, or deny the request for a permit modification. The Department will notify the Permittees of its determination within 90 days of receipt of a completed request.

d. If the Department tentatively approves, or tentatively approves with changes, the request for a permit modification the Department will follow the procedures for permit modification contained in 40 CFR 122.62 and in chapter 173-226 WAC.

e. Any final approval or disapproval of a modification request shall constitute an Agency Action under RCW 43.21B.110(1)(c).

2. The Department will process permit modifications as time and resources allow. The Department reserves the right to solely determine whether to modify this Permit and the relative priority for processing proposed permit modifications. Priority will be placed on proposed permit modifications which will provide the greatest environmental benefit or the greatest efficiency/cost savings without compromising environmental benefit. Proposed permit modifications benefiting multiple permittees will generally receive higher priority than proposals affecting a single permittee.

   Permittees requesting a more timely modification of this Permit shall provide the necessary funding to cover the costs associated with reviewing and processing the modification if Ecology agrees to a more timely modification.

3. Permittees may request a modification of the SWMP performance measures and/or the implementation schedules in this section in accordance with the following:

   All requests for modifications shall include, at a minimum, the following information:

   a. The Permittee(s) requesting the permit modification and whether the proposed modification would be applicable to other permittees covered under the permit;

   b. The specific permit conditions that are the subject of the request;

   c. A description of the proposed alternative requirements or schedule and reasons a permit modification is requested;

   d. A description of how the alternative proposal will result in equivalent or better environmental benefit;

   e. Objective measures for determining permit compliance equal to the original permit requirement; and

   f. A description of how the alternative proposal will provide an equivalent level of legal and technical justification as the initial requirement, including how on-going implementation of the proposed alternative reduces the discharge of pollutants to the maximum extent practicable and protects water quality.

A complete request for modification is a request which contains all of the relevant requirements of this section and any such other information the Department determines necessary to evaluate the request. Complete modification requests shall be submitted to:

Department of Ecology
Water Quality Program
Municipal Stormwater Permits
P.O. Box 47696
Olympia, WA 98504-7696

APPENDICES

APPENDIX 1 Cities and Counties Required to Obtain Coverage under this Permit

The "Bubble Cities" of Ellensburg, Moses Lake, Pullman, Sunnyside, and Walla Walla have been tentatively identified as regulated small MS4s with the release of this preliminary draft Permit (see Fact Sheet discussion under S1.B Permittees), but the Urban Growth Areas associated with these Cities are not included in this Permit. Therefore, Kittitas, Grant, and Whitman Counties are not named as Counties required to obtain permit coverage, and Yakima and Walla Walla Counties are only required to implement this Permit in the Urban Areas and Urban Growth Areas of the City of Yakima and the Tri-Cities, respectively.

APPENDIX 2 Minimum Technical Requirements

Ecology published the *Stormwater Management Manual for Eastern Washington* (Ecology Publication Number 04-10-076) in September 2004 following a several year, open process that involved representatives of local government, developers, and other interested parties. The manual is intended to provide up-to-date information and a commonly accepted set of practices for properly managing stormwater at new development and redevelopment sites to prevent adverse water quality impacts. The Best Management Practices (BMPs) included in the manual address at least three of the federal "six plus two" minimum requirements: Construction Site Stormwater Runoff Control, Post-Construction Stormwater Management, and Pollution Prevention and Good Housekeeping for Municipal Operations. The portions of the manual that apply have been used as a starting point for permit requirements.

The manual itself does not have any independent regulatory authority and does not establish any regulatory requirements or standards. However, Ecology has always intended that elements of the manual or the manual itself (or an equivalent document) would be part of the requirements of this Permit. In the *Municipal Stormwater NPDES Permit Program Report to the Legislature January 2004* (Ecology Publication Number 04-10-010), Ecology proposed to evaluate the eight "Core Elements of Stormwater Management" that are described in the manual to determine whether they are appropriate for inclusion in this Permit. Ecology's justification for including the Core Elements in the Permit is not simply that they are part of the manual, but rather because they satisfy the technical and regulatory standards for the Permit.

The contents of this Appendix are based on the *Stormwater Management Manual for Eastern Washington* but differ from the manual in three significant ways:

- First, the technical threshold requirements in the *Stormwater Management Manual for Eastern Washington* for applying the BMPs are different from the federal regulatory threshold requirements: the Appendix clarifies that the Permit only requires the Core Elements to be applied to projects that meet the regulatory threshold.

- Second, Ecology's intent is to make the requirements for developers the same under both this Permit and under the *Construction Stormwater General Permit*. The formal draft version of that permit is somewhat different from the section of Chapter 7 in the manual detailing the "Twelve Elements" of Construction Stormwater Pollution Prevention. For this Preliminary Draft Permit, Ecology has included the language used in the *Construction Stormwater General Permit* instead of the language in the manual. Ecology believes this will result in easier compliance with and implementation of both permits by the regulated community.

- Third, for the other Core Elements, only a subset of the requirements of the *Stormwater Management Manual for Eastern Washington* are included. There also are some minor wording changes intended to clarify what Ecology expects Permittees to require in their ordinances and plan reviews, but a developer who is adhering to the requirements of the *Stormwater Management Manual for Eastern Washington* would still be in compliance with the permit requirements for the local jurisdictions.

Ecology intends, by using this approach to reference the manual in the Permit, to make it clear that the rest of the manual is merely technical guidance. Including the Appendix with the Preliminary Draft Permit also allows anyone who disagrees with the substantive requirements in the Appendix to challenge those requirements specifically as part of the process of developing an issuing the Permit. The Appendix also makes it unambiguous that, in order to meet the requirements of this Permit, equivalent manuals do not have to be identical to the *Stormwater Management Manual for Eastern Washington*. The Appendix makes clear what Ecology's expectations will be for approving equivalent manuals, and also serves to subject the major requirements for approval to public comment.